



State of Utah

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Lieutenant Governor

Department of Transportation

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July 28, 2004

Ms. Leslie Van Frank, Esq.
Cohne, Rappaport & Segal, P.C.
525 E. 100 S., Suite 500
Salt Lake City, Utah 84102

Subject: Findings and Order – D. W. Davis Property (UDOT File 2003-02-21)

Dear Ms. Van Frank:

Enclosed are the Amended Findings and Order with respect to the hearing held July 12, 2004. We appreciate your time and effort in working with us in this matter. I remind you should you desire to pursue your appeal further that you have 30 days from the date of this letter to file a court action.

Sincerely,

David K. Miles, P. E.
Hearing Officer

DKM:js

cc: Mark Burns
Dave Miles
Jim Beadles
Terry Stowell
File

FINDINGS AND ORDER

*Application of ROA General, Inc. dba Reagan Outdoor Advertising
(971 South 1160 West, Orem – BJBD DW Davis)
File No. 03-03-001*

Region Three denied an application from Reagan Outdoor Advertising (Reagan) on August 20, 2003 for permission to place a billboard in Orem, Utah on land known as the BJBD DW Davis Property. Region Three's permit officer denied the permit on the grounds that the proposed location of the billboard was inside of the interchange. The region's proposed POW is located at the point where a fourth lane is added to the three-lane highway. This lane leads to the interchange exit. It is not physically impossible for a vehicle to get on this lane and then go back to one of the three lanes that continue south.

Reagan, on the other hand, claims on administrative appeal, that Region Three picked the wrong location as the POW and, thus, the beginning of the interchange. Reagan places the POW at a point much further south. At this location, the fourth lane veers off and goes to the interchange exit. At this point, it is physically impossible for a vehicle to go back into one of the lanes that continue south. As discussed further in this Order, Reagan also claims that its proposed location is within a deceleration lane, and, thus, not included in the statutory definition of interchange.

Additionally, and more important for purposes of this appeal, Reagan asserts that Region Three's proposed POW is incorrect because it is more than "2,640 feet from the center line of the intersecting highway of the interchange or intersection at grade." If this is correct, the sign would not be within the interchange and the only possible POW would be the one proposed by Reagan. Consequently, its proposed sign would be 508 feet from

the interchange and permissible. Both Reagan and UDOT agree that UDOT's proposed POW is more than 2640 feet from the center line of the intersecting highway of the interchange.¹

Based on this fact alone, Region Three's denial is wrong. Utah law expressly says that the point of widening may not be more than 2640 feet away from the center line of the intersecting highway of the interchange. In this situation, where there are two potential points of widening and one of them is more than 2640 feet from the intersecting highway, we must ignore the one that exceeds that distance and use the other potential point of widening as the correct one for purposes of advertising. Since Reagan's suggested POW is more than 500 feet away from the interchange, that POW is the correct point.²

Reagan is also correct in its other argument, i.e., that its proposed location is within a deceleration lane and, consequently is excluded from the definition of "interchange or intersection." In this particular case, the deceleration lane begins at the point that Region Three incorrectly identifies as the POW. Vehicles going into that lane must decelerate as they prepare to exit. The offramp, or beginning of the interchange, is at the POW identified by Reagan. At this point, vehicles are not only decelerating, but they have no choice but to exit and are actually exiting the main stream of traffic.

¹ The parties disagree on the exact measurement, but that disagreement is not relevant to the decision since they are both more than 2640 feet.

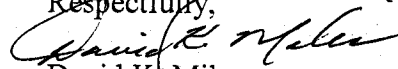
² The applicability of the 2640-foot limitation has never before been the subject of an appeal to the administrative hearing officer. Since other decisions referred to by the parties did not involve this critical restriction, they are not relevant to this appeal. Further, this decision will probably have limited relevance to future appeals.

Because Reagan's proposed site is within a deceleration lane, and is beyond 500 feet of the interchange's POW, the proposed site is a valid location.³

Consequently, Region Three's denial of the permit is reversed. Either party may petition for reconsideration within 10 days of the issuance of this decision.

DATED THIS 28th day of July 2004.

Respectfully,



David K. Miles

Administrative Hearing Officer

State Operations Engineer

cc: Carlos Braceras
Lyle McMillan
Tracy Conti
Terry Stowell
Fran Rieck
James H. Beadles

³ "Interchange or intersection" means those areas and those approaches where traffic is channeled off or onto an interstate route, excluding the deceleration lanes, acceleration lanes, or feeder systems, from or to another federal, state, county, city, or other route." Utah Code Ann. § 72-7-502(9).